



EUROPEAN COMMISSION

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**DECISION OF THE EUROPEAN COMMISSION PURSUANT TO ARTICLE 4 OF THE  
IMPLEMENTING RULES TO REGULATION (EC) No 1049/2001<sup>1</sup>**

**Subject: Your confirmatory application for access to documents under Regulation  
(EC) No 1049/2001 – GESTDEM 2022/4664**

Dear Mr Fanta,

I refer to your email of 22 September 2022, registered on the same day, by which you submitted a confirmatory application in accordance with Article 7(2) of Regulation (EC) No 1049/2001 regarding public access to European Parliament, Council and Commission documents<sup>2</sup> (hereafter ‘Regulation (EC) No 1049/2001’).

Please accept our apologies for the delay in handling of your request.

**1. SCOPE OF YOUR REQUEST**

In your initial application of 17 August 2022, addressed to the Directorate-General for Justice and Consumers, you requested access to the following documents, I quote:

‘In reply to parliament E-001677/2022, Commissioner Reynders states that the "Commission is also in contact with Hungary, Poland and Spain about the use of Pegasus and continues to gather information in this regard". I would like to request all communications (e-mail, letters, text messages, etc.) between the Commission and said member states on Pegasus.’

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<sup>1</sup> OJ L 345 of 29.12.2001, p. 94.

<sup>2</sup> OJ L 145 of 31.5.2001, p. 43.

The Directorate-General for Justice and Consumers identified the following documents as falling under the scope of your request:

- Letter from Commission to Hungary dd. 14.02.2022, registered under reference number Ares(2022)1074841 (hereafter ‘document 1’);
- Letter from Commission to Poland dd. 14.02.2022, registered under reference number Ares(2022)1074786 (hereafter ‘document 2’);
- Letter from Commission to Spain dd. 24.05.2022, registered under reference number Ares(2022)3894228 (hereafter ‘document 3’);
- Letter from Hungary to Commission dd. 11.05.2022, registered under reference number Ares(2022)4084762 (hereafter ‘document 4’);
- Letter from Poland to Commission dd. 29.03.2022, registered under reference number Ares(2022)2373937 (hereafter ‘document 5’).

In its initial reply dated 16 September 2022, the Directorate-General for Justice and Consumers refused access to documents 1-5 based on the exception of the third indent of Article 4(2) (protection of the purpose of inspections, investigations and audits) of Regulation (EC) No 1049/2001.

In your confirmatory application, you request a review of this position and you put forward a number of arguments in support of your application. These arguments will be addressed in the corresponding sections below.

## **2. ASSESSMENT AND CONCLUSIONS UNDER REGULATION (EC) NO 1049/2001**

When assessing a confirmatory application for access to documents submitted pursuant to Regulation (EC) No 1049/2001, the Secretariat-General conducts a review of the reply given by the Directorate-General concerned at the initial stage.

Following this review, I regret to inform you that I have to confirm the initial decision of the Directorate-General for Justice and Consumers to refuse access to documents 1-5 based on the exceptions of Article 4(1)(b) (protection of privacy and the integrity of the individual), the third indent of Article 4(2) (protection of the purpose of inspections, investigations and audits) and the first subparagraph of Article 4(3) (protection of the decision-making process) of Regulation (EC) No 1049/2001.

The detailed reasons underpinning the assessment are set out below.

### **2.1. Protection of privacy and the integrity of the individual**

Article 4(1)(b) of Regulation (EC) No 1049/2001 provides that ‘[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] privacy and the integrity of the individual, in particular in accordance with Community legislation regarding the protection of personal data’.

In its judgment in Case C-28/08 P (*Bavarian Lager*)<sup>3</sup>, the Court of Justice ruled that when a request is made for access to documents containing personal data, Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data<sup>4</sup> (hereafter ‘Regulation (EC) No 45/2001’) becomes fully applicable.

In the above-mentioned judgment, the Court stated that Article 4(1)(b) of Regulation (EC) No 1049/2001 ‘requires that any undermining of privacy and the integrity of the individual must always be examined and assessed in conformity with the legislation of the Union concerning the protection of personal data, and in particular with [...] [the Data Protection] Regulation’<sup>5</sup>. Likewise, in the *Psara* judgment, the General Court added that Article 4(1)(b) ‘establishes a specific and reinforced system of protection of a person whose personal data could, in certain cases, be communicated to the public [...]’<sup>6</sup>.

Please note that, as from 11 December 2018, Regulation (EC) No 45/2001 has been repealed by Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC<sup>7</sup> (hereafter ‘Regulation (EU) 2018/1725’).

However, the case-law issued with regard to Regulation (EC) No 45/2001 remains relevant for the interpretation of Regulation (EU) 2018/1725.

Article 3(1) of Regulation (EU) 2018/1725 provides that personal data ‘means any information relating to an identified or identifiable natural person [...]’.

As the Court of Justice confirmed in Case C-465/00 (*Rechnungshof*), ‘there is no reason of principle to justify excluding activities of a professional [...] nature from the notion of private life’<sup>8</sup>.

Parts of documents 1, 2 and 5 contain personal data such as the names, office numbers and contact details of persons who do not form part of the senior management of the European Commission and of persons external to the Commission who are not public figures. Moreover, document 5 contains a handwritten signature.

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<sup>3</sup> Judgment of the Court of Justice of 29 June 2010, *European Commission v The Bavarian Lager Co. Ltd* (hereafter referred to as ‘*European Commission v The Bavarian Lager* judgment’) C-28/08 P, EU:C:2010:378, paragraph 59.

<sup>4</sup> OJ L 8, 12.1.2001, p. 1.

<sup>5</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 59.

<sup>6</sup> Judgment of 25 September 2018, *Maria Psara and Others v European Parliament*, T-639/15 to T-666/15 and T-94/16, EU:T:2018:602, paragraph 65.

<sup>7</sup> OJ L 295, 21.11.2018, p. 39.

<sup>8</sup> Judgment of the Court of Justice of 20 May 2003, *Rechnungshof and Others v Österreichischer Rundfunk*, Joined Cases C-465/00, C-138/01 and C-139/01, EU:C:2003:294, paragraph 73.

The names of the persons concerned as well as other data from which their identity can be deduced undoubtedly constitute personal data in the meaning of Article 3(1) of Regulation (EU) 2018/1725<sup>9</sup>.

Pursuant to Article 9(1)(b) of Regulation (EU) 2018/1725, ‘personal data shall only be transmitted to recipients established in the Union other than Union institutions and bodies if ‘[t]he recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest and the controller, where there is any reason to assume that the data subject’s legitimate interests might be prejudiced, establishes that it is proportionate to transmit the personal data for that specific purpose after having demonstrably weighed the various competing interests’.

Only if these conditions are fulfilled and the processing constitutes lawful processing in accordance with the requirements of Article 5 of Regulation (EU) 2018/1725, can the transmission of personal data occur.

In Case C-615/13 P (*ClientEarth*), the Court of Justice ruled that the institution does not have to examine by itself the existence of a need for transferring personal data<sup>10</sup>. This is also clear from Article 9(1)(b) of Regulation (EU) 2018/1725, which requires that the necessity to have the personal data transmitted must be established by the recipient.

According to Article 9(1)(b) of Regulation (EU) 2018/1725, the European Commission has to examine the further conditions for the lawful processing of personal data only if the first condition is fulfilled, namely if the recipient establishes that it is necessary to have the data transmitted for a specific purpose in the public interest. It is only in this case that the European Commission has to examine whether there is a reason to assume that the data subject’s legitimate interests might be prejudiced and, in the affirmative, establish the proportionality of the transmission of the personal data for that specific purpose after having demonstrably weighed the various competing interests.

In your confirmatory application, you do not put forward any arguments to establish the necessity to have the data transmitted for a specific purpose in the public interest. Therefore, the European Commission does not have to examine whether there is a reason to assume that the data subjects’ legitimate interests might be prejudiced.

Notwithstanding the above, there are reasons to assume that the legitimate interests of the data subjects concerned would be prejudiced by the disclosure of the personal data reflected in the documents, as there is a real and non-hypothetical risk that such public disclosure would harm their privacy and subject them to unsolicited external contacts.

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<sup>9</sup> *European Commission v The Bavarian Lager* judgment, cited above, paragraph 68.

<sup>10</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Food Safety Agency*, C-615/13 P, EU:C:2015:489, paragraph 47.

Consequently, the Secretariat-General concludes that, pursuant to Article 4(1)(b) of Regulation (EC) No 1049/2001, access cannot be granted to the personal data, as the need to obtain access thereto for a purpose in the public interest has not been substantiated and there is no reason to think that the legitimate interests of the individuals concerned would not be prejudiced by the disclosure of the personal data concerned.

## **2.2. Protection of the purpose of inspections, investigations and audits and of the decision-making process**

The third indent of Article 4(2) of Regulation (EC) No 1049/2001 provides that '[t]he institutions shall refuse access to a document where disclosure would undermine the protection of [...] the purpose of inspections, investigations and audits, unless there is an overriding public interest in disclosure'.

The first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 provides that '[a]ccess to a document, drawn up by an institution for internal use or received by an institution, which relates to a matter where the decision has not been taken by the institution, shall be refused if disclosure of the document would seriously undermine the institution's decision-making process, unless there is an overriding public interest in disclosure'.

In accordance with the case-law of the Court of Justice, 'a European Union institution may take into account cumulatively more than one of the grounds for refusal set out in Article 4 of Regulation No 1049/2001 when assessing a request for access to documents held by it'<sup>11</sup>. Accordingly, the exceptions relating to the protection of the ongoing decision-making process and the purpose of inspections, investigations and audits are, in the present case, closely connected.

The Court of Justice ruled in *France v Schlyter* judgment that '[w]ithout there being any need to identify an exhaustive definition of 'investigation', within the meaning of the third indent of Article 4(2) of Regulation No 1049/2001, a structured and formalised Commission procedure that has the purpose of collecting and analysing information in order to enable the institution to take a position in the context of its functions provided for by the EU and FEU Treaties must be considered to be an investigation'<sup>12</sup>.

Furthermore, the Court stressed that '[t]hose procedures do not necessarily have to have the purpose of detecting or pursuing an offence or irregularity. The concept of 'investigation' could also cover a Commission activity intended to establish facts in order to assess a given situation'<sup>13</sup>. It is an autonomous concept of EU law which must be interpreted taking into account, inter alia, its usual meaning as well as the context in which it occurs<sup>14</sup>.

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<sup>11</sup> Judgment of 13 September 2013, *Netherlands v Commission*, T-380/08, EU:T:2013:480, paragraphs 26 and 34.

<sup>12</sup> Judgment of the Court of Justice of 7 September 2017, *France v Schlyter*, C-331/15 P, EU:C:2017:639, paragraph 46.

<sup>13</sup> *Ibid*, paragraph 47.

<sup>14</sup> *Ibid*, paragraph 45.

Documents 1-5 constitute correspondence between the European Commission and the authorities of Hungary, Poland and Spain with regard to Pegasus spyware and its implications in the context of the Union's data protection acquis, namely Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (Text with EEA relevance)<sup>15</sup> (hereafter 'Regulation (EU) 2016/679'), Directive (EU) 2016/680 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data by competent authorities for the purposes of the prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and on the free movement of such data, and repealing Council Framework Decision 2008/977/JHA<sup>16</sup> (hereafter 'Directive (EU) 2016/680'), and the national law implementing the provisions of Regulation (EU) 2016/679 and Directive (EU) 2016/680 in the respective Member States.

Pegasus is a hacking tool designed to secretly turn mobile phones into 24-hour surveillance devices, as it grants complete and unrestricted access to all sensors and information of the targeted device. It can read, send, or receive messages that should be end-to-end encrypted, download stored photos, collect passwords, hear and record voice or video calls as, among other things, it has full access to the phone's camera, microphone, and geolocation module. In addition, Pegasus is characterised by the possibility of carrying out the so-called 'zeroclick' hacking attacks, since it does not require any actions by the user to be triggered, and of 'jailbreaking' into the system by removing manufacturers' access restrictions. Pegasus spyware is also extremely difficult to detect and the intrusions are hard to prove. It combines a great level of intrusiveness with features capable of rendering the majority of the existing legal and technical safeguards completely ineffective.

Documents 1-5 contain information, views and detailed legal reasoning shared between the services of the European Commission and authorities of the Member States concerned in the specific and sensitive context of the implications of Pegasus spyware for the privacy and integrity of natural persons in light of provisions of Regulation (EU) 2016/679, Directive (EU) 2016/680 and the national law implementing the provisions of Regulation (EU) 2016/679 and Directive (EU) 2016/680 in the respective Member States.

These exchanges took place in the context of activities aimed at ensuring that the Commission has all the information necessary to conduct a wide-ranging assessment of impacts of all available options. The questions, opinions and assessments contained in these documents do not represent the final views of the Commission. The final analysis performed by the Commission would not necessarily reflect what is indicated in these documents, which are preliminary and not definitive assessments.

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<sup>15</sup> OJ L 119 of 4.5.2016, p. 1.

<sup>16</sup> OJ L 119 of 4.5.2016, p. 89.

The content of the documents requested is currently subject to the European Commission's assessment with a view to determining whether a possible infringement procedure for non-conformity of national transposition law with Regulation (EU) 2016/679 and Directive (EU) 2016/680 should be opened against the Member States concerned in accordance with Article 258 of the TFEU. On the basis of such investigations, the Commission will conclude on whether an infringement procedure should be launched. Disclosure of these documents would seriously undermine the purpose of the Commission's ongoing investigation, based on which it will conclude on whether an infringement procedure must be launched.

Access to documents 1-5 must therefore be refused on the basis of the third indent of Article 4(2) and the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

In your confirmatory application, you state, I quote: '[...] the European Ombudsman has found in several rulings that the risk of a protected interest being undermined must be reasonably foreseeable and not purely hypothetical. Furthermore, institutions need to prove, for each individual document, that disclosure would undermine the investigation (see European Ombudsman cases: 3699/2006/ELB 06 April 2010; 725/2014/FOR 01 October 2015; 248/2016/PB 31 October 2016). Likewise the Court, in *Franchet and Byk* (T-391/03 and T-70/04), stated that this exception only applies if disclosure of the documents in question endangers the completion of the investigation. I contend that this is not the case.'

In this respect, the Secretariat-General would like to point out that this refusal is justified based on the consideration that the assessment of the transposing measures in the Member States concerned is ongoing. The outcome of this assessment is therefore uncertain with regard to the possibility of opening infringement proceedings. It follows that non-disclosure the documents requested during the pre-litigation stage of an inquiry carried out in preparation of an administrative procedure is justified as long as there is a risk of affecting the nature of a future infringement procedure, altering its decision-making progress or undermining the objectives of that procedure, such as in the present case.

Moreover, it should be noted that during said investigations, the Commission services could reach different conclusions from the legal considerations contained in the documents requested, which were provided by the authorities of the respective Member States in case of documents 4 and 5. Indeed, it is possible that the Commission decides not to open an infringement procedure. By contrast, even if the Member States indicate certain provisions as being correctly transposed, the Commission can nonetheless decide to open an infringement procedure, for instance on the basis of developments in national law or in the implementation of the transposing measures in the Member State concerned.

Such decisions are usually based on a careful assessment by the Commission of the different nature of the gaps in transposition in all the Member States. Furthermore, it must be recalled that the Commission, when it considers that a Member State has failed to fulfil its obligations, remains free to assess whether it is appropriate to bring legal proceedings for infringement and to decide when it will initiate infringement proceedings against that Member State<sup>17</sup>.

In the present case, disclosure of the documents requested would undermine the protection of the purpose pursued by the Commission's investigation in view of a possible opening of infringement proceedings and the protection of the decision-making process from external pressure.

In your confirmatory application, you state, I quote: 'While I note that the Commission claims granting access to the documents would "affect the climate of mutual trust between the authorities of the concerned Member States and the Commission and would risk to prematurely alter the nature of the assessment", the Commission has not provided sufficient reasoning to explain why, specifically, disclosure would affect mutual trust. I argue that, in fact, relations between the Commission, Poland and Hungary are already strained and any disclosure regarding information on Pegasus can hardly have further negative effects.'

Contrary to your claim, it should be noted that the disclosure of the documents requested, in light of their preliminary nature, would undermine the climate of mutual trust with the Member States concerned and seriously undermine the ongoing decision-making, the independence and objectivity of which must be ensured. Disclosing these documents would discourage the Commission staff members and members of administration of the Member States concerned to have free and open discussions as far as the compliance with European law is concerned. Such disclosure would risk inciting restraint during future assessments and limit the exchanges of uncensored, independent opinions and advice necessary for the accomplishment of the institution's task. It would strain the working relations between the European Commission and the Member States' national authorities.

In addition, disclosure of the documents to which you request access would not only negatively influence the dialogue between the European Commission and the authorities of the Member States concerned, for which a climate of trust is essential, but would also hinder the Commission in defining the line to take for this file free from outside interference and open the door to undue external pressure, as it would disseminate preliminary considerations of staff members of the European Commission and of the representatives of the authorities of the Member States concerned that do not necessarily represent the final position of the European Commission. This could lead to speculations, premature conclusions, and serious interference with the Commission's decision-making process to open or not infringement proceedings, which is an exclusive prerogative of the latter and would be detrimental to the proper conduct of the investigation and undermine its effectiveness.

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<sup>17</sup> Judgment of the Court of Justice of 16 July 2015, *ClientEarth v European Commission*, C-612/13 P, EU:C:2015:486, paragraph 79.

It would also alter the strictly bilateral nature of the infringement procedures. The Secretariat-General takes the view that the purpose of such investigations is best achieved free from external pressure. The risk of such external pressure is real and not hypothetical given the specific and sensitive nature of Pegasus spyware's implications for privacy and the integrity of natural persons.

Indeed, as the General Court has held, ‘the possibility of expressing views independently within an institution helps to encourage internal discussions with a view to improving the functioning of that institution and contributing to the smooth running of the decision-making process’<sup>18</sup>.

In these circumstances, there is a real and non-hypothetical risk that disclosure of the documents requested would adversely affect the ongoing above-mentioned assessment and its follow-up and the ongoing decision-making process. In order for the European Commission to be able to carry out its tasks, there has to be a protected space throughout the different stages of the above-mentioned procedures until the case has been definitively closed.

Please note that it is not possible to give more detailed reasons justifying the need for confidentiality without disclosing the documents concerned and, thereby, depriving the exception of its very purpose<sup>19</sup>.

Consequently, the Secretariat-General concludes that, pursuant to the third indent of Article 4(2) and the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001, the documents requested cannot be disclosed, as their public disclosure would seriously undermine the purpose of investigations and the ongoing decision-making process.

### **3. OVERRIDING PUBLIC INTEREST IN DISCLOSURE**

The exceptions laid down in Article 4(2) and the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001 must be waived if there is an overriding public interest in disclosure. Such an interest must, firstly, be public and, secondly, outweigh the harm caused by disclosure. It is for the applicant to put forward specific circumstances that show that there is an overriding public interest, which justifies the disclosure of the documents concerned<sup>20</sup>.

According to the case-law, the applicant must, on the one hand, demonstrate the existence of a public interest likely to prevail over the reasons justifying the refusal of access to the documents concerned and, on the other hand, demonstrate precisely in what way disclosure of the documents would contribute to assuring protection of that public

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<sup>18</sup> Judgment of the General Court of 15 September 2016, *Phillip Morris v Commission*, T-18/15, EU:T:2016:487, paragraph 87.

<sup>19</sup> To that effect, see judgment of the General Court of 24 May 2011, *Navigazione Libera del Golfo Srl v Commission*, Joint Cases T-109/05 and T-444/05, EU:T:2011:235, paragraph 82; Judgment of the General Court of 8 February 2018, *Pagkyrios Organismos Ageladotrofon v Commission*, T-74/16, EU:T:2018:75, paragraph 71.

<sup>20</sup> See e.g. judgment of the General Court of 5 December 2018 in Case T-312/17, *Campbell*, EU:T:2018:876, paragraph 58.

interest to the extent that the principle of transparency takes precedence over the protection of the interests which motivated the refusal<sup>21</sup>.

In your confirmatory application, you state that, I quote, ‘[...] I would like to argue an overriding public interest in disclosure. I note that the matter of the Pegasus spyware and its use in various European Union member states is a matter of considerable scrutiny by the media, member state institutions and co-legislators. Indeed, the European Parliament has set up a committee specifically to investigate the use and misuse of said spyware. The hearings are public to advance the understanding of current practices regarding spyware and probe the need for new legislative action to prevent misuse. I would argue that the attack against a member of the European Commission and dealings of the European Commission in regard to Pegasus constitute a matter which could provide crucial insight into the subject investigated by the co-legislative institution. Indeed, I would like to argue that non-disclosure would obstruct any attempt to gain a full picture of the potential misuse of Pegasus and other spyware, therefore constituting a clear harm to public interest. In this regard, I would like to point out the *Pari Pharma* case (T-235/15), where the court found that specific, „succinct“ circumstances may merit disclosure. I argue that this threshold is met in this case.’

While the Secretariat-General appreciates the particularly sensitive implications of the use of Pegasus spyware for the protection of privacy and the integrity of natural persons, having analysed your arguments, it has not been able to identify any public interest in disclosure of the withheld documents capable of overriding the interests described above. The fact that this subject matter is of interest of the wider public or of the Committee of Inquiry to investigate the use of Pegasus and equivalent surveillance spyware (PEGA) of the European Parliament does not mean that the publication of the withheld documents cannot have any impact on the protection of the purpose of investigations and of the ongoing decision-making process, nor does it mean that there is an overriding public interest in disclosing the documents in question.

Furthermore, please note that general considerations or references to transparency do not demonstrate a pressing need for the disclosure of the documents requested and cannot provide an appropriate basis for establishing that a public interest prevails over the reasons justifying the refusal to disclose the documents in question<sup>22</sup>.

Nor has the Secretariat-General been able to identify any public interest capable of overriding the public and private interests protected by Article 4(2) and the first subparagraph of Article 4(3) of Regulation (EC) No 1049/2001.

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<sup>21</sup> Judgment of the General Court of 9 October 2018, *Anikó Pint v European Commission*, T-634/17, EU:T:2018:662, paragraph 48; Judgment of the General Court of 23 January 2017, *Association Justice & Environment, z.s v European Commission*, T-727/15, EU:T:2017:18, paragraph 52; Judgment of the General Court of 5 December 2018, *Falcon Technologies International LLC v European Commission*, T-875/16, EU:T:2018:877, paragraph 84.

<sup>22</sup> Judgment of the Court of Justice of 14 November 2013, *Liga para a Protecção da Natureza (LPN) and Republic of Finland v European Commission*, Joined Cases C-514/11 P and C-605/11 P, EU:C:2013:738, paragraph 93.

To the contrary, the Secretariat-General considers the overriding public interest to be better served by ensuring the protection of the purpose of investigations and of the ongoing decision-making process.

The Secretariat-General concludes therefore that an overriding public interest has not been demonstrated in this particular case.

The fact that the documents requested relate to an administrative procedure and not to a case where the Commission is acting in its legislative capacity, for which the Court of Justice has acknowledged the existence of wider openness<sup>23</sup>, provides further support to this conclusion.

Please note that Article 4(1)(b) of Regulation (EC) No 1049/2001 does not include the possibility for the exception defined therein to be set aside by an overriding public interest.

#### **4. PARTIAL ACCESS**

In accordance with Article 4(6) of Regulation (EC) No 1049/2001, the Secretariat-General has considered the possibility of granting partial access to the documents requested.

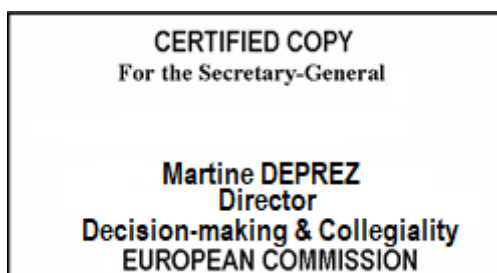
However, for the reasons explained above, no meaningful partial access is possible without undermining the interests described above.

Consequently, the Secretariat-General has come to the conclusion that the documents requested are covered in their entirety by the invoked exceptions to the right of public access.

#### **5. MEANS OF REDRESS**

Finally, I draw your attention to the means of redress available against this decision. You may either bring proceedings before the General Court or file a complaint with the European Ombudsman under the conditions specified respectively in Articles 263 and 228 of the Treaty on the Functioning of the European Union.

Yours sincerely,



*For the Commission*  
*Ilze JUHANSONE*  
*Secretary-General*

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<sup>23</sup> Judgment of the Court of Justice of 29 June 2010, *Commission v Technische Glaswerke Ilmenau GmbH*, C-139/07 P, EU:C:2010:376, paragraphs 53-55 and 60.